

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Rafael Barrett,)	C/A No.: 5:14-cv-03901-MGL-KDW
)	
)	
Plaintiff,)	
)	REPORT AND RECOMMENDATION
v.)	
)	
)	
)	
Sgt T. Gibbons, Nurse T. James, and Mr.)	
Adger, Inspector General,)	
)	
Defendants.)	
)	

Plaintiff is proceeding pro se, and he filed this 42 U.S.C. § 1983 action alleging that Defendants violated his constitutional rights. *See* ECF No. 1. This matter is before the court on Plaintiff's Affidavit for Entry of Default, ECF No. 36, Plaintiff's Motion to Dismiss Defendant James, ECF No. 37, and Plaintiff's Motion for Judgment as a Matter of Law, ECF No. 39. Defendants filed responses to Plaintiff's Motions. *See* ECF Nos. 46, 51. This case was referred to the undersigned United States Magistrate Judge for all pretrial proceedings pursuant to the provisions of 28 U.S.C. § 636(b)(1)(A) and (B) and Local Rule 73.02(B)(2)(d) and (e), D.S.C. Because these Motions are dispositive, a Report and Recommendation is entered for the court's review.

I. Affidavit for Entry of Default

Though not docketed as a motion, Plaintiff filed an Affidavit of Default where he maintains, pursuant to Rule 55 of the Federal Rules of Civil Procedure, that the court should enter default against Defendants for failing to answer his Complaint. ECF No. 36. Specifically, Plaintiff argues that each of the Defendants knew of the January 30, 2015 deadline. *Id.*

Service was executed upon Defendants Adger and James on December 9, 2014. *See* ECF Nos. 24, 25, and in an Order the court instructed these Defendants to respond to Plaintiff's Complaint by January 30, 2015. ECF No. 27. Defendants James and Adger filed and served Plaintiff with their answer on January 29, 2015. ECF No. 32. Therefore, Defendants have timely appeared. Additionally, the undersigned notes that Defendant Gibbons was recently served on February 24, 2015, and still has time to appear. ECF No. 54. Therefore, the undersigned recommends denying Plaintiff's Affidavit for Entry of Default, ECF No. 36.

II. Motion to Dismiss

In his Motion to Dismiss, captioned as a Motion to Withdraw Nurse James from being a Defendant, ECF No. 37, Plaintiff states: "After investigating the issues of this [C]omplaint, it is determined that Nurse James should be withdrawn from the [C]omplaint and should not be called to have [to] defend against the issues of this [C]omplaint." *Id.* In Response, Defendants do not object to the dismissal of Defendant James. ECF No. 46. Accordingly, the undersigned recommends granting Plaintiff's Motion, ECF No. 37, and dismissing Defendant James from this action.

III. Motion for Judgment as a Matter of Law

Pursuant to Rule 50 of the Federal Rules of Civil Procedure, Plaintiff moves for a "judgment as matter of law due to evidence obtained through an interrogatory discovery." ECF No. 39. Plaintiff maintains that he is seeking judgment against Defendant Adger, former Inspector General of SCDC. *Id.* Plaintiff contends that though Defendant Adger admits to receiving his request for a polygraph test to be administered on Defendant Gibbons, Defendant Adger failed to administer the test because he found it was unnecessary. *Id.* Further, according to

other answers to interrogatories, Plaintiff contends that Defendant Adger affirms that polygraph tests have been administered on other SCDC employees due to misconduct. *Id.* at 1-2. Therefore, Plaintiff argues that Defendant Adger committed official misconduct in failing to administer his request for a polygraph and placed other prisoners in jeopardy. *Id.* at 2.

Rule 50 concerns judgments as a matter of law in a jury trial. Other than referencing Rule 50, Plaintiff has not given any legal basis to support his motion. Furthermore, the undersigned finds liability has not been conclusively established and several factual issues remain. Moreover, the parties have not yet had the opportunity to complete discovery. *See* ECF No. 33. Therefore, the undersigned recommends denying Plaintiff's Motion for Judgment as a Matter of Law, ECF No. 39.

IT IS SO RECOMMENDED.

A handwritten signature in black ink, reading "Kaymani D. West". The signature is fluid and cursive, with the first name "Kaymani" being more prominent than the last name "West".

March 10, 2015
Florence, South Carolina

Kaymani D. West
United States Magistrate Judge

**The parties are directed to note the important information in the attached
“Notice of Right to File Objections to Report and Recommendation.”**